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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RODERICK SMITH PHILLIPS,

Defendant and Appellant.

2d Crim. No. B 171799  
(Super. Ct. No. 1096547)  
(Santa Barbara County)

Roderick Smith Phillips appeals a judgment following conviction of first degree residential burglary. (Pen. Code, §§ 459, 460)<sup>1</sup> We affirm.

FACTS

In the late morning of August 16, 2002, Terry Harris left her Hope Ranch residence to run errands. She fastened a note to the front door requesting a prospective guesthouse tenant to leave a rental application under the doormat. Harris did not lock the front door.

When she returned several hours later, Harris found that her bedroom had been ransacked. Her grandmother's cosmetics box was on the bed and its contents missing. A Nikon camera flash box that had been on the fireplace mantel

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<sup>1</sup> All further statutory references are to the Penal Code unless stated otherwise.

was also on the bed.

The cosmetics box contained large pieces of antique jewelry – earrings, brooches, necklaces, rings, and bangles. The jewelry was silver or gold with pearls or jade. Harris described the jewelry as "heavy" and "thick." She had stored the cosmetics box on the floor of her bedroom closet and had not looked at the jewelry for several years.

Santa Barbara Sheriff's deputies responded to Harris's burglary call. Among other things, they dusted the cosmetics box, glass sliding doors, and the Nikon flash box for fingerprints. The latent fingerprints obtained from the flash box matched those of Phillips, a parolee.

Sheriff's deputies arrested Phillips at his place of employment, "Arroyo's Fine Jewelry," in Ventura. Phillips possessed a black nylon bag and a September 13, 2002, pawn slip from "Old Town Jewelry and Loan." The black bag contained jewelry, pearls, stones, and business cards of jewelry dealers.

The deputies visited Old Town Jewelry and Loan and learned that Phillips had sold scrap gold there on September 3 and September 11, 2002. On September 15, 2002, Phillips pawned a gold chain.

Harris later visited the pawn shop and examined the gold and jewelry that Phillips had pawned. She was unable to identify the jewelry, however, because it had been "taken apart" or disassembled.

Sheriff's deputies also searched Phillips's residence. They found "hundreds of pieces" of jewelry throughout the apartment. The jewelry included watches, costume jewelry, bracelets and necklaces. Harris was unable to identify her grandmother's jewelry among the jewelry photographed and seized from Phillips's apartment.

Several days before the Harris burglary, Phillips pawned two gold chains at another pawn shop, "The Cash Station," in Ventura. His girlfriend pawned two rings at Old Town Jewelry and Loan after Phillips's arrest.

During his pretrial confinement, Phillips wrote letters to his girlfriend discussing the evidence against him and the possibility of returning stolen articles in return for a plea bargain. The trial court admitted the letters into evidence.

#### PROCEDURAL HISTORY

The jury convicted Phillips of first degree residential burglary. (§§ 459, 460.) The trial court found that he suffered four prior serious felony convictions, alleged for sentence enhancement and recidivist sentencing, and that he served four prior prison terms. (§§ 667, subd. (a), subds. (b)-(i), 1170.12, subds. (a)-(d), & 667.5, subd. (b).) The trial court sentenced him to a prison term of 48 years to life.

Phillips appeals and contends that the trial court abused its discretion by admitting evidence of his possession of large amounts of jewelry and his pawn shop transactions prior to the Harris burglary.

#### DISCUSSION

Phillips argues that evidence of his possession and frequent pawning of jewelry is prejudicial propensity evidence, prohibited by Evidence Code sections 1101 and 352, and due process of law. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 404-406.) He asserts that the jury was likely to infer that he had a criminal disposition to deal in stolen jewelry. Phillips relies upon *People v. Allen* (1976) 65 Cal.App.3d 426, 435, disapproved on other grounds by *People v. Green* (1980) 27 Cal.3d 1, 39, concluding that evidence that a defendant associated with known thieves was inadmissible and prejudicial character evidence. Pointing to the evidence of his jewelry store employment, he adds the propensity evidence is cumulative concerning motive.

Phillips asserts that absent the evidence, there is a reasonable chance of a more favorable result. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715.) He argues that the due process violation is not harmless beyond a reasonable doubt.

The trial court enjoys a broad discretion in determining the relevance of evidence and its undue prejudice pursuant to Evidence Code section 352. (*People v. Cole* (2004) 33 Cal.4th 1158, 1195; *People v. Kipp* (1998) 18 Cal.4th 349, 369 [discretion to determine admissibility of evidence of prior criminal conduct].) The prejudice standard of Evidence Code section 352 refers to evidence that tends to elicit an emotional bias against the defendant. (*People v. Kipp* (2001) 26 Cal.4th 1100, 1121.) It does not refer to evidence that is merely damaging. (*Ibid.*)

The trial court did not abuse its discretion in admitting evidence of the pawn shop transactions and the jewelry discovered in Phillips's apartment because the evidence was relevant circumstantial evidence of guilt. Evidence that Phillips possessed or had pawned jewelry or disassembled jewelry similar to that taken in the Harris burglary tended to establish that Phillips burglarized the Harris residence. Although Harris did not identify any of the jewelry possessed or pawned by Phillips, she explained that it had been "taken apart" and was in pieces.

Moreover, the evidence was not unduly prejudicial because it did not necessarily suggest that Phillips had committed other crimes. He was employed by a jewelry store and had business cards of other jewelry dealers. Evidence of his pawnshop transactions established that Phillips knew the value of jewelry and knew where to sell it.

In any event, Phillips cannot establish prejudice under any standard of review. (*People v. Cole, supra*, 33 Cal.4th 1158, 1195 [discussion of standards of review for Evid. Code §§ 1101 & 352 claims and due process claim].) Sheriff's deputies found his fingerprints on the Nikon flash box that had been moved from the fireplace mantel to the master bedroom. Our Supreme Court has emphasized that fingerprint evidence is strong evidence of identity. (*People v. Johnson* (1988) 47 Cal.3d 576, 601.) "Fingerprint evidence is the strongest evidence of identity and is ordinarily sufficient alone to identify the defendant." (*Ibid.*) In letters to his girlfriend, Phillips stated that he was "just praying [that] they can't dial me into [a]

459 fingerprints 'latent'" [sic] and that he "could actually come up with a lot of stuff" to return to the victims in exchange for "a deal." Any error is harmless.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Thomas R. Adams, Judge  
Superior Court County of Santa Barbara

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